IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-04-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 49149 of 2006
W.P. No. 3363 and 3364 of 2007
and
M.P. Nos. 1 and 2 of 2006
M.P. Nos. 1, 1, 2 and 2 of 2007
-o-

WP No. 49149 of 2006

Paruthipalli Panchayat Union
rep. By its President P. Thangammal
Paruthipalli Post
Mallasamudhram Via
Thiruchengode Taluk
Namakkal District
Pincode - 637 503 .. Petitioner

Versus

1. The Collector
   Collectorate of Namakkal
   Namakkal District

2. The Tahsildar
   Thiruchengode
   Namakkal District

3. The Executive Engineer
   Public Works Department
   Sarabanga
   Namakkal District

4. The Block Development Officer
   Mallasamudhram
   Thiruchengode Taluk
   Namakkal District

5. The Revenue Inspector
   Vyappamalai
   Thiruchengode Taluk
   Namakkal District

6. K. Malli

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7. Pallipalayam Avarangadu Fisherman
Co-operative Society
Jedarpalayam & Post
Namakkal District .. Respondents
rep. By its Special Officer V. Kuppusamy

(R6 and R7 were impleaded as per the
Order dated 12.03.2007 made in
MP Nos. 1 and 2 in WP No. 49149/2006)

WP No. 3363 of 2007

A. Sakthivel .. Petitioner

Versus

1. The District Collector
Namakkal District
Namakkal

2. The Assistant Director of Fisheries
Mettur Dam
Salem District

3. The Executive Engineer
Public Works Department
Sarabanga Water Basin Division
Namakkal

4. The Inspector of Police
Elachipalayam Police Station
Elachipalayam Taluk
Namakkal District

5. The Special Officer/Inspector of
Fisheries
Pallipattu Avarangadu Fisherman
Co-operative Society
Jedarpalayam Post
Namakkal District

6. The President
Paruthipalli Village Panchayat
Paruthipalli Post
Mallasamudram
Thiruchengode Taluk
Namakkal Post

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7. K. Malli .. Respondents

(R7 was impleaded as per Order
dated 12.03.2007 made in MP No.3
of 2007 in WP No.3363 of 2007)

WP No. 3364 of 2007

K. Balu .. Petitioner

Versus

1. The District Collector
   Namakkal District
   Namakkal

2. The Assistant Director of Fisheries
   Mettur Dam
   Salem District

3. The Executive Engineer
   Public Works Department
   Sarabanga Water Basin Division
   Namakkal

4. The Inspector of Police
   Elachipalayam Police Station
   Elachipalayam Taluk
   Namakkal District

5. The Special Officer/Inspector of
   Fisheries
   Pallipattu Avarangadu Fisherman
   Co-operative Society
   Jedarpalayam Post
   Namakkal District

6. The President
   Paruthipalli Village Panchayat
   Paruthipalli Post
   Mallasamudram
   Thiruchengode Taluk
   Namakkal Post

7. K. Malli .. Respondents

(R7 was impleaded as per Order
dated 12.03.2007 made in MP No.3
of 2007 in WP No.3364 of 2007)

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WP No.49149 of 2006: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari to call for the records of the 3rd respondent in its proceedings letter Ka.No.1758/ 2006/T4 dated 20.09.2006 and quash the same.

WP No. 3363 of 2007: Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 4 to take appropriate legal action against the 6th respondent and consequently forbearing the 6th respondent from interfering with the fishing activities of the petitioner in respect of Paruthupalli tank, Thiruchengode Taluk, Namakkal District as per the proceedings of the third respondent issued in Ka.No.1758/2006/ T4 dated 20.09.2006.

WP No. 3364 of 2007: Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 4 to take appropriate legal action against the 6th respondent and consequently forbearing the 6th respondent from interfering with the fishing activities of the petitioner in respect of Paruthupalli tank, Thiruchengode Taluk, Namakkal District as per the proceedings of the third respondent issued in Ka.No.1758/2006/ T4 dated 20.09.2006

WP No. 49149 of 2006

For Petitioner : Mr. Anand
For Respondents : Mr. I. Paranthamen
Government Advocate for RR1 to 5
Mr. V. Raghavachari for R6
Mr. G. Sankaran for R7

WP No. 3363 & 3364 of 2007

For Petitioner : Mr. R.N. Amarnath
For Respondents : Mr. I. Paranthamen
Government Advocate for RR1 to 5
Mr. Anand for R6
Mr. V. Raghavachari for R7

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COMMON ORDER

All these writ petitions are relating to the Order dated 20.09.2006 granting lease in favour of Special Officer/ Inspector of Fisheries, Pallipattu, Aravangadu Fisherman Co-operative Societies, which in turn granted sub-lease to the writ petitioners in WP Nos. 3963 and 3964 of 2007, hence, they are disposed of by this common order.

2. For the sake of convenience, the petitioner in WP Nos. 3363 and 3364 of 2007 shall hereinafter be referred as as petitioners; the petitioner in WP No. 49149 of 2006 shall be referred to as Objector No.1; the respondent Mr. Malli, who is the 6th respondent in WP No. 49149 of 2006 and 7th respondent in WP No. 3363 and 3364 of 2007 shall hereinafter be referred to as Objector No.2; The Special

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Officer/Inspector of Fisheries, Pallipattu, Aravangadu Fisherman Co-operative Societies shall hereinafter referred to as 'Society' and the other officers are referred to as per their designation.

3. The Executive Engineer, Public Works Department executed a lease deed dated 20.09.2006 leasing out Paruthupalli Tank to the Society for the period commencing from 01.07.2006 to 30.06.2007 which in turn leased out the same to the respective writ petitioners for an annual rent of Rs.17,000/- and Rs.28,570/- respectively. Since the Objectors have allegedly attempted to interfere with their business, WP Nos. 3363 and 3364 of 2007 were filed by the petitioners.

4. The Objector No.1, who is the President of Paruthupalli Panchayat Union filed WP No. 49149 of 2006 challenging the lease deed dated 20.09.2006 executed by the Executive Engineer, Public Works Department, in favour of the society and to quash the said lease.

5. It is the case of the petitioners as well as the Executive Engineer, Public Works Department and the Society that Paruthupalli Tank belonged to Public Works Department, which is being maintained by it, hence, they are competent to lease it out to any person of their choice and accordingly, the same was leased out to the society, which was also ratified by the District Collector by order dated 03.04.2007, hence, it iis not open to the objectors or any person to interfere with their rights in the said tank.

6. The case of the objectors is that Paruthupalli tank is located within the jurisdiction of Paruthupalli Panchayat Union, hence, the provisions of Tamil Nadu Panchayat (Lease and Licensing of Fishery Rights in Water Sources Vested and Regulated by Village Panchayat and Panchayat Union Councils) Rules 1999 are applicable. In the said Rules, as per Appendix I, it is categorically mentioned that irrigation sources, which are entrusted to Panchayat Union Council under Section 133 (1) of Tamil Nadu Panchayat Act, 1999 and maintained by them and non-provisionalised water sources of Public Works Department maintained by them can be dealt with only by Village Panchayat concerned, hence, it is not open to Public Works Department to deal with any manner, hence, the lease deed dated 20.09.2006 executed in favour of the society is not valid. It is further submitted by the Objectors that the lease was executed on 20.09.2006, whereas, the lease amount was received on 02.09.2006 itself which shows that the Public Works Department had whimsically selected the society at their sweat will; that the tanks shall not be leased by nomination, if at all, they have to go for public auction after giving wide publicity, which are required as per law, but the same was not done in this case, hence, the lease deed executed by the Public Works Department also is not valid.

7. The case of the Public Works Department is that Paruthupalli tank is owned by them, as per G.O. Ms. No.332, Animal Husbandary and Fisheries (FS IV) Department dated 17.11.1993 the fishing rights for the fasli year 1416 was given to the Society as per the recommendations of the Assistant Director of Fisheries, Mettur Dam by their letter No.1132/E/06 dated 31.08.2006. The Executive Engineer, Public Works Department, Sarabanga Basin Division, Namakkal approved the fishing

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rights to the society by letter No.1758/2006/ A4 dated 20.09.2006; that as per the Revenue Standing Order (RS0) 211, the first priority should be given to the fisherman co-operative society and it is the only one society in the area, considering the same, the lease was executed to the said society, which in turn sub-leased the same to the writ petitioners.

8. The case of the District Collector is that though Paruthupalli tank is situate within Thiruchengode Namakkal District, it is being maintained by the Public Works Department as per the descriptive memoir of irrigation works in Thirumanithuar minor basin of Cauvery river basin. Since Paruthupalli tank is being owned by Public Works Department, fishing right for fasli 1416 was given to the society by them as per the recommendations of the Assistant Director of Fishermen, Mettur Dam in letter dated 31.08.2006 in terms of G.O. Ms. No.332, Animal Husbandary and Fisheries Department dated 17.11.1993.

9. The learned counsel appearing for the parties reiterated their respective contentions mentioned in their pleadings and this Court carefully considered the argument on both sides and also perused the material records placed.

10. The case of the Public Works Department is that the Paruthupalli tank is owned by Public Works Department. The case of the Objectors is that the said tank is situate within the jurisdiction of Paruthupalli Panchayat Union, hence, the same can be dealt with only by the Panchayat Union in terms of the said Rules as well as Appendix I. Though both the Public Works Department and the Objectors have claimed right in the said tank, both of them have not produced any evidence to support their respective claims. However, the fact remains that the lease was granted by the Executive Engineer, Public Works Department as per the recommendations made by the Assistant Director of Fisheries, Mettur Dam as well as of G.O. Ms. No.332, Animal Husbandary Department dated 17.11.1993 to the society by nomination and not by public auction.

11. To decide the issue involved in this writ petition, it is necessary to refer to Paragraph No.3 of the said G.O. Ms. No. 332 dated 17.11.1993, which is extracted below:

> "3. As per revenue Department standing order 211, while granting lease of fishing rights to the Co-operative societies comprised of Fishermen or of Harijans engaged in fishing should be given the first opportunity. Auctioning of fishery rights otherwise than by lease should be resorted to only if no Co-operative Societies of Fishermen or Harijans engaged in fishing or the Panchayats are not willing to take up the lease. The procedure envisaged in Revenue Department standing Order 211 is still in vogue and will continue to operate in future with the modification indicated in para-4 below regarding the period of lease, which will be quinquennial instead of annual."

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12. It is contended by the Public Works Department and the District Collector that there is only one society, which is Pallipattu

Aravangadu Fisherman Society and considering the same only, the lease was granted by the Public Works Department. If it is so, it should have been found mentioned in the counter affidavit filed by either the District Collector or the Executive Engineer, Public Works Department, but it is absent. This Court carefully perused the counter affidavits of the said authorities and found that no where it is mentioned that there is only one society.

13. Mr. Raghavachari, the learned counsel appearing for the Objector No.2 relied on Paragraph No.5 of the Impleading Petition and submitted that there are number of societies, but the reason is not known why a particular society alone was whimsically selected and recommended by the Assistant Director of Fisheries, which was also accepted by the Public Works Department and District Collector. In Para-5 of the affidavit filed in support of the impleading petition filed by the Objector No.2, it was mentioned thus:-

> "5. It is also not known under what authority of law the fisheries department had chosen the 5th respondent for the largess. There are several fishing societies in the area. Consequently, the need to prefer the 5th respondent alone without holding an auction is inexplicable. It is not within the realm of the Fisheries Department to pick and choose fishing society to confer benefits on it. Auction is the only course available to deal with the public property. The facts narrated by the writ petitioner and the documents produced by him apparently proves that the 3rd respondent had been 'recklessly generous' in dealing with the property of the State and that too, without following the basic norms."

14. The said averments made by the Objector No.2 was not denied by the other parties. One another factor which convinces this Court is that the lease was ordered only on 20.09.2006 but the lease was granted with retrospective effect from 01.07.2006, besides that even before passing the Order dated 20.09.2006 granting lease in favour of the society the lease amount was received by the Public Works Department on 02.09.2006 i.e., 18 days prior to the said order. Moreover, as indicated above, the stand taken by the Public Works Department that there is only one society to which the lease was granted is not supported by any evidence, when it was specifically denied by the Objector No.2 and it is the duty of the authorities to substantiate their, but they failed.

15. In view of the above discussion, though this Court is not deciding the title or right relating to the tank, which is the subject matter of this writ petition, this Court is of the view that the way in which the lease was ordered to the society is not satisfactory, besides, it is illegal, hence, this Court is inclined to allow WP No. 49149 of 2006 and consequently, WP No. 3363 and 3364 are liable to be dismissed.

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16. Accordingly, WP No. 49149 of 2006 is allowed. WP No. 3363 and 3364 of 2007 are dismissed. No costs. It is open to the parties to go

for any further auction or leasing, but first decide the issue about the right or title of Paruthupalli Village, hence, the District Collector, who is having the over all control of the District, is directed to decide the said issue in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Collector
   Collectorate of Namakkal
   Namakkal District

2. The Tahsildar
   Thiruchengode
   Namakkal District

3. The Executive Engineer
   Public Works Department
   Sarabanga
   Namakkal District

4. The Block Development Officer
   Mallasamudhram
   Thiruchengode Taluk
   Namakkal District

5. The Revenue Inspector
   Vyappamalai
   Thiruchengode Taluk
   Namakkal District

6. The Inspector of Police
   Elachipalayam Police Station
   Elachipalayam Taluk
   Namakkal District.

7. The Asst. Director of Fisheries,
Mettur Dam, Salem District.

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8. The Special Officer/Inspector of Fisheries,
Pallipattu Avarangadu Fisherman
Co-operative Society
Jedarpalayam Post
Namakkal District

9. The President
Paruthipalli Village Panchayat
Paruthipalli Post
Mallasamudram
Thiruchengode Taluk
Namakkal Post

+ 2 CCs to Mr.Anand, Advocate SR NO 29515, 29513

WP No. 49149 of 2006
WP Nos. 3363 & 3364/2007
27-04-2007

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Gp/14.5.

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